

AMENDED IN SENATE APRIL 9, 2014

AMENDED IN SENATE MARCH 24, 2014

SENATE BILL

No. 962

Introduced by Senator Leno
(Coauthors: Senators Hancock, Pavley, and Wolk)
(Principal coauthor: Assembly Member Skinner)

February 6, 2014

An act to add Section 22761 to the Business and Professions Code, relating to mobile communications devices.

LEGISLATIVE COUNSEL'S DIGEST

SB 962, as amended, Leno. Advanced mobile communications devices.

Existing law regulates various business activities and practices, including the sale of telephones.

This bill would require that any advanced mobile communications device, as defined, that is sold in California on or after January 1, 2015, include a technological solution, which may consist of software, hardware, or both software and hardware, that can render inoperable the essential features of the device, as defined, when the device is not in the possession of the rightful owner. The bill would require that the technological solution be able to withstand a hard reset, as defined, and when enabled, prevent reactivation of the device on a wireless network except by the rightful owner or his or her authorized designee. The bill would make these requirements inapplicable to the sale of an advanced mobile communications device in California when (1) the device was manufactured prior to January 1, 2015, or was originally sold outside of California, and (2) when the device is resold in California on the secondary *secondhand* market or is consigned and held as collateral on

a loan. The bill would prohibit the sale of an advanced mobile communications device in California without the technological solution being enabled, but would authorize the rightful owner to affirmatively elect to disable the technological solution after sale. ~~The bill would prohibit a provider of commercial mobile radio service, as defined, from including any term or condition in a sales or service contract with an end-use consumer with an address within the state that requires or encourages the consumer or rightful owner to disable the technological solution that renders the consumer's smartphone or other advanced communications device useless if stolen.~~ The bill would make a violation of the bill's requirements subject to a civil penalty of not less than \$500, nor more than \$2,500, for each violation.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) According to the Federal Communications Commission,
- 4 smartphone thefts now account for 30 to 40 percent of robberies
- 5 in many major cities across the country. Many of these robberies
- 6 often turn violent with some resulting in the loss of life.
- 7 (b) Consumer Reports projects that 1.6 million Americans were
- 8 victimized for their smartphones in 2012.
- 9 (c) According to the New York Times, 113 smartphones are
- 10 lost or stolen every minute in the United States.
- 11 (d) According to the Office of the District Attorney for the City
- 12 and County of San Francisco, in 2012, more than 50 percent of all
- 13 robberies in San Francisco involved the theft of a mobile
- 14 communications device.
- 15 (e) Thefts of smartphones in Los Angeles increased 12 percent
- 16 in 2012, according to the Los Angeles Police Department.
- 17 (f) According to press reports, the international trafficking of
- 18 stolen smartphones by organized criminal organizations has grown
- 19 exponentially in recent years because of how profitable the trade
- 20 has become.
- 21 (g) Replacement of lost and stolen mobile communications
- 22 devices was an estimated thirty-billion-dollar (\$30,000,000,000)
- 23 business in 2012 according to studies conducted by mobile

1 communications security experts. Additionally, industry
2 publications indicate that the four largest providers of commercial
3 mobile radio services made an estimated seven billion eight
4 hundred million dollars (\$7,800,000,000) from theft and loss
5 insurance products in 2013.

6 (h) Technological solutions that render stolen mobile
7 communications devices useless already exist, but the industry has
8 been slow to adopt them.

9 (i) In order to be effective, these technological solutions need
10 to be ubiquitous, as thieves cannot distinguish between those
11 mobile communications devices that have the solutions enabled
12 and those that do not. As a result, the technological solution should
13 be able to withstand a hard reset or operating system downgrade,
14 and be enabled by default, with consumers being given the option
15 to affirmatively elect to disable this protection.

16 (j) Manufacturers of advanced mobile communications devices
17 and commercial mobile radio service providers have a
18 responsibility to ensure their customers are not targeted as a result
19 of purchasing their products and services.

20 (k) It is the intent of the Legislature to require all smartphones
21 and other advanced mobile communications devices offered for
22 sale in California to come with a technological solution enabled,
23 in order to deter theft and protect consumers.

24 ~~(l) It is the further intent of the Legislature to prohibit any term~~
25 ~~or condition in a service contract between a customer and a~~
26 ~~commercial mobile radio service provider that requires or~~
27 ~~encourages the customer to disable the technological solution that~~
28 ~~renders the customer's smartphone or other advanced~~
29 ~~communications device useless if stolen.~~

30 SEC. 2. Section 22761 is added to the Business and Professions
31 Code, to read:

32 22761. (a) For purposes of this section, the following terms
33 have the following meanings:

34 (1) "Advanced mobile communications device" means an
35 electronic device that is regularly hand held when operated that
36 enables the user to engage in voice communications using mobile
37 telephony service, Voice over Internet Protocol, or Internet Protocol
38 enabled service, as those terms are defined in Sections 224.4 and
39 239 of the Public Utilities Code, and to connect to the Internet,

1 and includes what are commonly known as smartphones and
2 tablets.

3 (2) “Commercial mobile radio service” means “commercial
4 mobile service,” as defined in subsection (d) of Section 332 of
5 Title 47 of the United States Code and as further specified by the
6 Federal Communications Commission in Parts 20, 22, 24, and 25
7 of Title 47 of the Code of Federal Regulations, and includes
8 “mobile satellite telephone service” and “mobile telephony
9 service,” as those terms are defined in Section 224.4 of the Public
10 Utilities Code.

11 (3) “Essential features” of an advanced mobile communications
12 device include the ability to use the device for voice
13 communications and the ability to connect to the Internet, including
14 the ability to access and use mobile software applications
15 commonly known as “apps.”

16 (4) “Hard reset” means the restoration of an advanced mobile
17 communications device to the state it was in when it left the
18 factory, and refers to any act of returning a device to that state,
19 including processes commonly termed a factory reset or master
20 reset.

21 (5) “Sold in California” means that the advanced mobile
22 communications device is sold at retail, ~~and not for resale,~~ *retail*
23 from a location within the state, or the advanced mobile
24 communications device is sold and shipped to an end-use consumer
25 at an address within the state. *“Sold in California” does not include*
26 *a device that is resold in the state on the secondhand market or*
27 *that is consigned and held as collateral on a loan.*

28 (b) (1) Any advanced mobile communications device that is
29 sold in California on or after January 1, 2015, shall include a
30 technological solution that can render the essential features of the
31 device inoperable when the device is not in the possession of the
32 rightful owner. The technological solution shall be reversible, so
33 that if the rightful owner obtains possession of the device after the
34 essential features of the device have been rendered inoperable, the
35 operation of those essential features can be restored by the rightful
36 owner or his or her authorized designee. A technological solution
37 may consist of software, hardware, or a combination of both
38 software and hardware, but shall be able to withstand a hard reset,
39 and when enabled, shall prevent reactivation of the device on a
40 wireless network except by the rightful owner or his or her

1 authorized designee. No advanced mobile communications device
2 may be sold in California without the technological solution
3 enabled. ~~The essential features that are required to be rendered~~
4 ~~inoperable pursuant to this paragraph do not include the ability of~~
5 ~~the device to access emergency services by dialing the numerals~~
6 ~~“911.”~~

7 ~~(2) The requirements of paragraph (1) do not apply to the sale~~
8 ~~of an advanced mobile communications device in California if~~
9 ~~both of the following are true:~~

10 ~~(A) The device was manufactured prior to January 1, 2015, or~~
11 ~~was originally sold outside of California.~~

12 ~~(B) The device is resold in California on the secondary market~~
13 ~~or is consigned and held as collateral on a loan.~~

14 *(2) The “essential features” that are required to be rendered*
15 *inoperable pursuant to this subdivision do not include the ability*
16 *of a device to access emergency services by a voice call or text to*
17 *the numerals “911” and the ability of a device to receive wireless*
18 *emergency alerts and warnings.*

19 (3) The rightful owner of an advanced mobile communications
20 device may affirmatively elect to disable the technological solution
21 after sale. However, the physical acts necessary to disable the
22 technological solution may only be performed by the end-use
23 consumer or a person specifically selected by the end-use consumer
24 to disable the technological solution and shall not be physically
25 performed by any retail seller of the advanced mobile
26 communications device.

27 ~~(e) A provider of commercial mobile radio service shall not~~
28 ~~include a charge, discount, incentive, or other term or condition~~
29 ~~in a sales or service contract with an end-use consumer with an~~
30 ~~address within the state that requires or encourages the consumer~~
31 ~~or rightful owner to disable the technological solution that renders~~
32 ~~the consumer’s smartphone or other advanced communications~~
33 ~~device useless if stolen.~~

34 ~~(d) (1)–~~

35 (c) A person or retail entity selling an advanced communications
36 device in California in violation of subdivision (b) shall be subject
37 to a civil penalty of not less than five hundred dollars (\$500), nor
38 more than two thousand five hundred dollars (\$2,500), per device
39 sold in California.

~~(2) A provider of commercial mobile radio service that includes a term or condition in a service contract with an end-use consumer with an address within the state in violation of subdivision (e) shall be subject to a civil penalty of not less than five hundred dollars (\$500), nor more than two thousand five hundred dollars (\$2,500), per service contract with an end-use consumer with an address within California.~~

(d) Any request by a government agency to interrupt communications service utilizing a technological solution required by this section is subject to Section 7908 of the Public Utilities Code.

(e) Nothing in this section requires a technological solution that is incompatible with, or renders it impossible to comply with, obligations under state and federal law and regulation related to any of the following:

(1) The provision of emergency services through the 911 system, including text to 911, bounce-back messages, and location accuracy requirements.

(2) Participation in the wireless emergency alert system.

(3) Participation in state and local emergency alert and public safety warning systems.